DEPARTMENT OF FINANCE

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May 5, 2013

Ms. Veronica Tapia, Accountant II
City of Palm Desert
73-510 Fred Waring Drive
Palm Desert, CA 92260

Dear Ms. Tapia:

Subject: Other Funds and Accounts Due Diligence Review

This letter supersedes the California Department of Finance's (Finance) original Other Funds and Accounts (OFA) Due Diligence Review (DDR) determination letter dated April 1, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Palm Desert Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 14, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Finance issued an OFA DDR determination letter on April 1, 2013. Subsequently, the Agency requested a Meet and Confer session on one or more items adjusted by Finance. The Meet and Confer session was held on April 17, 2013.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of those specific items being disputed. Specifically, the following adjustments were made:

- The Agency requested balances retained for fiscal year 2012-13 obligations in the amount of $27,979,432 is partially denied. The Agency may retain $22,828,373 as further discussed below. Accordingly, the OFA balance available for distribution is increased by $5,151,059.

  The Agency requested to retain $24,491,809 for the Recognized Obligation Payment Schedule (ROPS) for the July through December 2012 (ROPS II) period. Finance approved $43,528,269 and the Riverside County Auditor Controller disbursed $20,911,971 from the Redevelopment Property Tax Trust Fund (RPTTF). On the July through December 2013 ROPS (ROPS 13-14A) form, the Agency reported actual expenditures for the ROPS II period of $20,911,971. Additionally, the Agency requested to retain $1,916,402 to cover one of the items approved on ROPS II, but not yet paid due to insufficient funding from the RPTTF. Therefore, the Agency may retain $22,828,373 ($20,911,971 + $1,916,402). Additionally, for the January through June 2013 ROPS (ROPS III) period, the Agency requested to retain $3,487,623 for obligations that were previously denied by Finance per our letter dated December 18, 2012; therefore, retention of this amount is not permitted.

- Balances retained for funding of future enforceable obligations in the amount of $15,032,326 is disallowed. The Agency's request to retain the amount in current unencumbered OFA balances to cover future obligations is not allowed. Since Finance has only approved funding through the ROPS III period, the Agency's fund balances are only encumbered to the extent they have been approved on a ROPS through June 30, 2013. The cash flow analysis provided by the Agency does not demonstrate an immediate need to retain these unencumbered OFA balances, nor does it suggest available funding will be insufficient to service the Agency's bond debt.

  The Agency contends that per the former RDA's redevelopment plan, the Agency will be reaching their tax increment cap prior to the bonds reaching their final maturity date. However, Section 7 of the sixth amendment to the redevelopment plan states that the limit is exclusive of amounts used to pay debt service. Additionally, AB 1484 does not authorize the retention of funds but for limited circumstances. the Agency's request to retain funds based on stated limitations in the former redevelopment agency's plan is not an authorized type of retention under AB 1484 and Finance cannot authorize the request. Furthermore, it is Finance's expectation that ABx1 26/AB 1484 allow enforceable obligations to be listed on the ROPS and payable out of available RPTTF until such obligation has been satisfied. Therefore, the OFA balance available for distribution will be increased by $15,032,326.

  Should deficits occur in the future, HSC provides successor agencies with various methods to address short term cash flow issues. These may include requesting a loan from the city pursuant to HSC section 34173 (h), requesting the accumulation of reserves on the ROPS when a future balloon or uneven payment is expected pursuant to HSC section 34177 (d) (1) (A), or subordinating pass-through payments pursuant to HSC section 34183 (b). The Agency should seek counsel from their oversight board to determine the solution most appropriate for their situation if a deficiency were to occur.

The Agency's OFA balance available for distribution to the affected taxing entities is $28,203,544 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	8,020,159
Finance Adjustments		
Unallowed balances retained for future obligations	$	15,032,326
Unallowed balances retained to satisfy ROPS obligations		5,151,059
Total OFA available to be distributed:	$	28,203,544

This is Finance's final determination of the OFA balances available for distribution to the taxing entities. HSC section 34179.6 (f) requires successor agencies to transmit to the county auditor-controller the amount of funds identified in the above table within five working days, plus any interest those sums accumulated while in the possession of the recipient. Upon submission of payment, it is requested you provide proof of payment to Finance within five business days.

If funds identified for transmission are in the possession of the successor agency, and if the successor agency is operated by the city or county that created the former redevelopment agency, then failure to transmit the identified funds may result in offsets to the city's or the county's sales and use tax allocation, as well as its property tax allocation. If funds identified for transmission are in the possession of another taxing entity, the successor agency is required to

take diligent efforts to recover such funds. A failure to recover and remit those funds may result in offsets to the other taxing entity's sales and use tax allocation or to its property tax allocation. If funds identified for transmission are in the possession of a private entity, HSC 34179.6 (h) (1) (B) states that any remittance related to unallowable transfers to a private party may also be subject to a 10 percent penalty if not remitted within 60 days.

Failure to transmit the identified funds will also prevent the Agency from being able to receive a finding of completion from Finance. Without a finding of completion, the Agency will be unable to take advantage of the provisions detailed in HSC section 34191.4. Specifically, these provisions allow certain loan agreements between the former redevelopment agency (RDA) and the city, county, or city and county that created the RDA to be considered enforceable obligations. These provisions also allow certain bond proceeds to be used for the purposes in which they were sold and allows for the transfer of real property and interests into the Community Redevelopment Property Trust Fund once Finance approves the Agency's long-range property management plan.

In addition to the consequences above, willful failure to return assets that were deemed an unallowable transfer or failure to remit the funds identified above could expose certain individuals to criminal penalties under existing law.

Pursuant to HSC sections 34167.5 and 34178.8, the California State Controller's Office (Controller) has the authority to claw back assets that were inappropriately transferred to the city, county, or any other public agency. Determinations outlined in this letter do not in any way eliminate the Controller's authority.

Please direct inquiries to Evelyn Suess, Supervisor, or Mary Halterman, Analyst, at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Ms. Janet Moore, Director of Housing, City of Palm Desert
Ms. Pam Elias, Chief Accounting Property Tax Division, County of Riverside Auditor-Controller
California State Controller's Office